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SB 558-559, HB 5520: Abolishing a Wife's Dower Rights

Comments of the Michigan Poverty Law Program-Family Law Task Force

May 3, 2016

Chairman Kesto, members of the House Judiciary Committee, thank you for the opportunity to provide these comments expressing concerns regarding Senate Bill (SB) 558 and SB 559. The Michigan Poverty Law Program – Family Law Task Force engages legal services advocates with interest and expertise in issues related to domestic violence, custody and other family law matters, particularly as they apply to low-income individuals.

SB 558 would abolish dower rights of a wife in the property of her husband. SB 559 and HB 5520 would eliminate the requirement that every divorce judgment include a provision in lieu of the dower of the wife in the property of the husband. The current statute, MCL 558.1, provides: "The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage."

While it is true that dower is antiquated and gender-biased and the EPIC's percentage protections for spouses are greater, dower offers some protection against a husband (or wife if the statute were gender-neutral) who unilaterally mortgages the parties' marital home and uses the proceeds for personal gain. The benefit of dower is that it requires a wife to sign off on her dower rights before marital property could be sold or encumbered and serves the function of giving her notice of the conveyance. The abolition of dower would eliminate the notice requirement.

As a matter of good public policy it would be beneficial to require that a spouse (wife or husband) be given notice about the real estate dealings of his or her spouse. Without such protection, the non-dealing, non-property owning spouse will be less protected against financial interactions that could be devastating, potentially leaving the unprotected spouse impoverished or homeless.

We suggest that these bills be amended to include protection that applies equally regardless of gender, as follows:

“Where a grantor who is married sells, mortgages or otherwise conveys or encumbers an interest in real property which is his or her primary marital residence, both spouses shall consent to the transaction or conveyance.”

Thank you for your consideration of these comments. If you have any questions or concerns, please do not hesitate to contact me, or MPLP’s governmental affairs consultant, Jean Doss (see below).

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